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OGC Has Reviewed

OGC 69-0309

18 February 1969

MEMORANDUM FOR THE RECORD

SUBJECT: Conflict of Interest Laws and the Penalties for
Violations Thereof

1. Because of the appointment of a Task Force within the Agency to study the plausibility of creating an employee pension-investment program and the possibility of a conflict of interest arising from within the Task Force, Mr. [] asked me to research the conflict of interest laws. The following appear to be the applicable authorities.

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2. The prohibited action which is paraphrased and quoted below is a felony, punishable by a fine of up to \$10,000 or imprisonment of up to two years or both. Any "officer or employee of the executive branch of the United States Government, "...who..."participates personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which to his knowledge, he, his spouse, minor child, partner, organization in which he is serving as an officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest," shall be subject to the penalties set out above. 18 U.S.C.A. 208.

3. In addition to this statutory proscription, the President, by Executive Order 11222 of 8 May 1965, set forth certain "standards of ethical conduct for Government officers and employees." Pertinent

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sections of the Executive Order are:

Section 101. Where government is based on the consent of the governed, every citizen is entitled to have complete confidence in the integrity of his government. Each individual officer, employee, or adviser of government must help to earn and must honor that trust by his own integrity and conduct in all official actions.

Section 201. (a) Except in accordance with regulations issued pursuant to subsection (b) of this section, no employee shall solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan or any other thing of monetary value, from any person, corporation, or group which--

(1) has, or is seeking to obtain, contractual or other business or financial relationships with his agency;

(2) conducts operations or activities which are regulated by his agency; or

(3) has interests which may be substantially affected by the performance or nonperformance of his official duty.

(c) It is the intent of this section that employees avoid any action, whether or not specifically prohibited by subsection (a), which might result in, or create the appearance of--

(1) using public office for private gain;

(2) giving preferential treatment to any organization or person;

(3) impeding government efficiency or economy;

(4) losing complete independence or impartiality of action;

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(5) making a government decision outside official channels, or

(6) affecting adversely the confidence of the public in the integrity of the Government.

4. Agency regulations on conflict of interest are found in

[redacted] Therein a conflict of interest is defined as "a situation in which an Agency employee's private interest, usually but not necessarily of an economic nature, conflicts or appears to conflict with his Agency duties and responsibilities. The situation is of concern to the Agency whether the conflict is real or only apparent."

5. With respect to the possible conflict of interest a Task Force member might have, I believe it is particularly important to make certain that no member has a financial interest in or is an employee of an investment company. The statute and the Executive Order prohibit, and indeed make it a crime, for such a person to participate in any way in the business of the Task Force. With respect to an employee who is not a member of the Task Force but who sells investments as a sideline, I believe the conflict of interest would be apparent if he should recommend a particular type of investment or a particular company to a member of the Task Force. That person would be using the knowledge he has as a Government employee to promote his own private and outside financial interest. The reverse of these apparent conflicts is also true. An employee who sells mutual funds as a sideline might feel it would be to his advantage to discourage the establishment of the pension-investment fund because it would cut into his sales to fellow employees.

*not if
he knows
& we ensure
that no
financial
benefit
accrues to him*

signed

[redacted]

Office of General Counsel

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